Editor's note: 92 I.D. 109

TERRY L. WILSON

IBLA 82-147 Decided February 28, 1985

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, denying a petition to reinstate homestead entry F-429 and to issue confirming patent.

Affirmed.

1. Alaska: Homesteads -- Contests and Protests: Generally -- Homesteads (Ordinary): Contests -- Rules of Practice: Appeals: Notice of Appeal -- Rules of Practice: Government Contests

   Neither actual nor constructive notice of a Departmental decision is accomplished by an attempted service using certified mail where the delivering post office returns the decision to the Department after 7 days and it affirmatively appears that the addressee had not moved nor refused delivery, and the address used was his address of record.

2. Alaska: Homesteads -- Contests and Protests: Generally -- Homesteads (Ordinary): Contests -- Rules of Practice: Appeals: Notice of Appeal -- Rules of Practice: Government Contests

   While 43 U.S.C. § 1165 (1982) provides for issuance of a patent to an entryman upon a 2-year lapse following issuance of "receipt" when no contest is then pending, the statutory 2-year period does not begin to run at the time the entryman files his final proof, but begins only upon payment for the land. Where appellant had not paid for the land sought to be patented, but had

only paid fees associated with filing his homestead entry, he was not entitled to patent.

3. Alaska: Homesteads -- Rules of Practice: Government Contests

Failure by the Government to deliver a notice of contest action brought against a homestead entry within 30 days of commencement of action does not affect the validity of the complaint where notice of the action is given to the entryman in a reasonably timely manner.

4. Alaska: Homesteads -- Alaska National Interest Lands Conservation Act: Generally -- Alaska National Interest Lands Conservation Act: Valid Existing Rights

The Department of the Interior does not retain jurisdiction to adjudicate the merits of a homestead entryman's claim that he has a valid existing right which is prior to that asserted by Alaska where the land sought by the entryman was tentatively approved for conveyance to the State of Alaska since sec. 906(c)(1) of the Alaska National Interest Lands Conservation Act legislatively confirmed all tentative approvals of state land selections, subject to valid existing rights, and conveyed the land in dispute out of Federal control.

5. Alaska: Homesteads -- Alaska National Interest Lands Conservation Act: Generally -- Patents of Public Lands: Suits to Cancel

The Department is barred by the provisions of 43 U.S.C. § 1166 (1982) from challenging the conveyance of land to the State of Alaska by sec. 906 of the Alaska National Interest Lands Conservation Act, confirming tentative approvals of State land selections subject to valid rights, where more than 6 years have passed since the conveyance. Since the lands here conveyed legislatively to the State were tentatively approved for conveyance in 1976, and since the Act makes such conveyance effective as of the date of tentative approval, provision of 43 U.S.C. § 1166 (1982) bars any possibility of Departmental intervention on behalf of the entryman in this case.

APPEARANCES: Terry L. Wilson, pro se; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; M. Francis Neville, Esq., Assistant Attorney General, Anchorage, Alaska, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

This appeal arises from the conflict between an Alaska homesteader's application and a land selection by the State of Alaska made pursuant to the Alaska Statehood Act for the same tract of land. On October 22, 1981, the Fairbanks District Office, Bureau of Land Management (BLM), denied a petition filed by Terry L. Wilson to reinstate and issue a confirming patent to homestead entry claim F-429 for land located near Chena Hot Springs, Alaska, in T. 3 N., R. 9 E., Fairbanks Meridian. This action by BLM was predicated upon an earlier adjudication canceling homestead entry F-429 made on October 2, 1974, pursuant to 43 CFR 4.450-7(a), because of Wilson's failure to respond to a contest complaint brought by BLM against Wilson's homestead claim. Since no appeal was taken from this decision, the homestead entry was canceled on BLM's records on November 18, 1974. On June 3, 1976, the State of Alaska received tentative approval of its application F-15151 for lands selected pursuant to the Alaska Statehood Act including T. 3 N., R. 9 E., Fairbanks Meridian, Alaska, embracing, among others, all the land claimed by Wilson in entry claim F-429. On December 2, 1980, sections 906 and 1328 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1635 and 16 U.S.C. § 3215 (1982), legislatively approving certain pending Alaskan land claims, were enacted into law. On May 27, 1981, Wilson filed a petition for reinstatement of his canceled homestead entry claiming that he had only recently discovered that it had been canceled and that such cancellation was improper and the entry should be reinstated on BLM records, and, further that his claim was legislatively approved by section 1328 of ANILCA.

Contending he had received neither the 1974 contest complaint nor the BLM decision of October 2, 1974, Wilson now seeks recognition by the Department that his homestead entry remained pending before the Department because of the alleged failure by BLM to effectively prosecute the 1974 contest action. According to Wilson, during the nearly 7 years which elapsed between the decision canceling his homestead entry and the filing of his petition for reinstatement, he knew nothing of the BLM action to cancel his claim until he "recently made inquiry at the land office as to the status of land surveys and title to the homestead" (Petition at 2).

While the initial attempt to serve a copy of the contest complaint was unsuccessful, the BLM case file reveals, however, that BLM's second attempt to serve a contest complaint upon Wilson was received and signed for by Belle Wilson on August 20, 1974. This complaint was sent by certified mail to appellant's address of record at Chena Hot Springs, Alaska 99700. Under 43 CFR 4.422(c) service of a document may be made by personal delivery or by registered or certified mail, return receipt requested, to the individual's address of record with BLM. See 43 CFR 4.450-5. Service by registered or certified mail may be proved by a post office return receipt showing the document was delivered at his record address or showing that the document could not be delivered to his record address because he had moved without leaving a forwarding address or because delivery was refused at that address or because no such address exists. 43 CFR 4.422(c)(2). A document is considered served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter. 43 CFR 4.422(c)(3). Therefore, in this case, BLM properly served the second contest complaint on Wilson. Since he failed to answer the

complaint, BLM also properly found the allegations of the complaint were admitted. See 43 CFR 4.450-7(a). These allegations, that Wilson failed to establish and maintain residence upon the homestead as required by law, were sufficient to invalidate appellant's application, and BLM properly canceled the entry. United States v. Niece, 33 IBLA 290 (1978).

BLM's October 2, 1974, decision canceling the entry was, however, never properly served on appellant. BLM also chose to serve the decision document by certified mail. What happened when the post office received the decision document is described by Wilson:

> [T]he Post Office returned the Decision as unclaimed after only a single attempt at notification of the undersigned. The Post Office's statement on the envelope did not show that it was, in fact, delivered or attempted to be delivered to the record address at Chena Hot Springs, Alaska, nor did it show that it could not be delivered because the addressee had moved without leaving a forwarding address, or that delivery was refused, or that such address does not exist. In any event, the undersigned did not receive the decision, and neither actual or constructive service was accomplished. Nondelivery due merely to the document being "unclaimed" is insufficient grounds for proving service under BLM regulations. See 43 CFR 4.422(c)(2).

(Petition at 5).

[1] The record on appeal supports appellant's statement of the facts. BLM memoranda to the file establish that Wilson's mail addressed to Chena Hot Springs was not delivered to Chena Hot Springs, which had no post office, but was held at the post office in Fairbanks for pickup, usually by Wilson's father. The BLM decision of October 2, 1974, was delivered by BLM to the post office for certified delivery on October 2, 1974. The returned envelope in which the decision was mailed bears the entry "first notice 10/3" and shows

that it was returned to BLM on October 10, 1974. A comment by the Fairbanks postmaster upon this form of attempted delivery appears in the record on appeal; he observes, concerning the October 2, 1974, mailing:

> The letter appears to have been mishandled in that there is no indication that a second attempt to deliver was made and the letter was returned after seven days.
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> * * * * * * *
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> The present policy is that delivery is attempted three times before returning. Certified mail is then held 15 days before it is returned.

(Letter dated May 10, 1983, from Postmaster Hayes).

Past decisions of this Board establish that where, as here, BLM selects the post office as its agent for the purpose of transmitting an official document, it must bear the consequences of a failure by the post office to make adequate attempts at delivery. See, e.g., Joan L. Harris, 37 IBLA 96 (1978). Here the record demonstrates that the October 2 decision was held by the post office for only 7 days before it was returned to BLM. The decision was not delivered to the addressee. Moreover, as appellant points out, delivery was not refused, the addressee had not moved, and the address was a real address. Under these circumstances the constructive notice provision of 43 CFR 1810.2 cannot be invoked. See L. Lee Horschman, 74 IBLA 360 (1983); Joan L. Harris, supra; Jack R. Coombs, 28 IBLA 53 (1976). As a result, until Wilson received notice of the October 2, 1974, decision, his appeal rights were preserved. Therefore, nothing in the record contradicts his assertion that his petition, which must also be considered to be an appeal from the October 2, 1974, decision, was timely made. His petition,

and the arguments he advances in support of his contention that he is entitled to patent, must therefore be considered in this light.

[2] Appellant argues that he is entitled to a patent under provisions of 43 U.S.C. § 1165 (1982) and 43 CFR 1862.6 because, due to lost mail, he was not served with BLM's contest complaint within 30 days of its filing in the land office and, as a consequence, no contest was pending 2 years after "filing of the final Proof" (Statement of Reasons at 7-11). The statute, 43 U.S.C. § 1165 (1982), provides in part:

> [A]fter the lapse of two years from the date of the issuance of the receipt of such officer as the Secretary of the Interior may designate upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under [the Act of March 3, 1891], and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him. * * *.

Wilson assumes that the 2-year limitation imposed by the statute was triggered by his "filing of final proof" (Statement of Reasons at 7). This, however, is not the law. It is, rather, the issuance of receipt for final payment for the homestead that begins the running of the 2-year period. See United States v. Bunch, 64 IBLA 318 (1982). The decision in Bunch, after discussing the history of the statute and analyzing cases construing the Act, summarizes the correct rule:

> [T]here can be no doubt that the 2-year period [provided by 43 U.S.C. § 1165] does not commence until issuance of the final receipt of the receiver, or, in the modern context, the final receipt "of such officer as the Secretary * * * may designate." The "final receipt" evinces the full and final payment of the entryman of all monies due the United States, so that "no subsequent receipt [is] contemplated or required." [Emphasis in original; citation omitted.]

Id. at 64 IBLA 324. See also United States v. Braniff (On Reconsideration) 65 IBLA 94 (1982).

The record on appeal establishes that Wilson has paid two filing fees totaling $50; the first payment of $25 was made for filing the notice of homestead location; the second payment of $25 was made with appellant's filing of final proof of homestead. He has confused his receipt for the second $25 payment with the payment required for the entire tract to which he seeks patent. Quite clearly, however, appellant has not paid for the homestead, was never issued a receipt for such payment, and is not entitled to claim the benefit of the provisions of 43 U.S.C. § 1165 (1982).

[3] This leaves for consideration his claim that there was no contest action pending 30 days after commencement of the contest action in the absence of service upon him of the complaint. Regulation 43 CFR 4.450-3 provides that a person desiring to initiate a contest must file a complaint in the proper land office. It further requires a contestant to serve a copy of the contest complaint on the contestee not later than 30 days after filing the complaint. The failure of BLM to serve its complaint in accordance with this regulation, appellant argues, caused the contest to terminate. Appellant claims that issuance of a receipt occurred on January 18, 1972; the record shows BLM filed its complaint on January 14, 1974, and delivered it to the post office on January 15, 1974, for mailing by certified mail. Service was first obtained on August 20, 1974. A copy of the complaint was posted in the land office on January 15, 1974, and removed on October 2, 1974.

In Jacob A. Harris, 42 L.D. 611 (1913), First Assistant Secretary Jones, construing what is now 43 U.S.C. § 1165 (1982), quoted above, concluded

that a contest or protest, to defeat the confirmatory effect of the proviso [of section 1165], must be a proceeding sufficient, in itself, to place the entryman on his defense or to require of him a showing of material fact, when served with notice thereof; and, in conformity with the well established practice of the Department, such a proceeding will be considered as pending from the moment at which the affidavit is filed, in the case of a private contest or protest, or upon which the Commissioner of the General Land Office, on behalf of the Government, requires something to be done by the entryman or directs a hearing upon a specific charge. The date of the issuance and service of notice is immaterial, if without undue delay and pursuant to the orderly course of business under the regulations.

Id. at 614.

At no time does it appear that the Department withdrew its contest complaint following its first attempt at service. Indeed, the identical complaint, except for a notary's statement, was served on Wilson in the second attempt. A copy of this complaint was posted in the land office at all relevant times. No case cited by appellant supports his argument that a failure to serve the complaint within 30 days causes the complaint to become defective. Nor has appellant shown how the tardy delivery of the complaint adversely affected him in any way. Consequently, it is concluded the Government's contest of homestead application F-429 was pending upon the filing of the contest complaint in the land office on January 14, 1974. Cf. Rule 3 of the Federal Rules of Civil Procedure, which provides that "[a] civil action is commenced by filing a complaint with the court." In any event, however, as already established, the provisions of section 1165 were never operative here, since no receipt was ever issued to Wilson, and, therefore, the 2-year period of limitation relied upon by Wilson's argument concerning the contest complaint never began to run.

[4] The BLM decision of October 22, 1981, which rejected Wilson's petition, was based, in part, upon a finding that the provisions of ANILCA section 906(c)(1) operated instantaneously to transfer the land in T. 3 N., R. 9 E., including the land embraced by Wilson's homestead entry, to the State because the lands had earlier been tentatively approved for conveyance to the State (Decision at 3). This determination has been recently confirmed to be the law. See State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 249, 91 I.D. 331, 338 (1984), rev'g State of Alaska v. Thorson, 76 IBLA 264 (1983), which holds that "[t]he effect of subsection 906(c)(1) of ANILCA on legal title is the same as the effect of a conveyance [to the State of Alaska] by patent." Thorson further holds that, despite the subsequent discovery of a conflicting entry or application, such as Wilson's, for an interest in public lands tentatively approved for conveyance to the State of Alaska, "ANILCA was intended to, and did, convey legal title to [other pending] claims within [tentatively approved] lands from the United States to the State of Alaska. Thus, the Department no longer possesses jurisdiction over such lands and has no authority on its own to affect title thereto." Id. at 253, 91 I.D. at 340. The apparent intent of this language is that the Department shall not, following "tentative approval," make any substantive determinations concerning claims to the lands conveyed by ANILCA to the State. With a single exception, which is later considered, therefore, a determination concerning the merits of any pending conflicting claim to a State selection conveyed by ANILCA can no longer be made by the Department.

Section 906(c)(1) of ANILCA, 43 U.S.C. § 1635(c)(1) (1982) provides, pertinently: "All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby confirmed, subject only to

valid existing rights * * * and the United States hereby confirms that all right, title, and interest of the United States in and to such lands is deemed to have vested in the State of Alaska as of the date of tentative approval." The Thorson decision, which concerned later-filed Native allotment selections in conflict with State selections, rejected the argument that the phrase used by the statute "subject only to valid existing rights" operates to retain conflicting claims for adjudication by the Department. Finding that Congress intended section 906(c)(1) of ANILCA to immediately convey all land tentatively approved for conveyance to the State, even though the land might be subject to "valid existing rights" such as the claim asserted by Wilson, the decision observes at 83 IBLA 246, 91 I.D. 336: "As to the interests (i.e., valid existing rights) * * * embraced by a tentative approval, Congress clearly intended to transfer all of the underlying right, title, and interest of the United States to the State."

Section 1328 of ANILCA also purports to give legislative approval to homestead claims pending on the date of the Act. Section 1328(a)(1) provides:

> Subject to valid existing rights, all applications made pursuant to the Acts of June 1, 1938 (52 Stat. 609), May 3, 1927 (44 Stat. 1364), May 14, 1898 (30 Stat. 413), and March 3, 1891 (26 Stat. 1097), which were filed with the Department of the Interior within the time provided by applicable law, and which describe land in Alaska that was available for entry under the aforementioned statutes when such entry occurred, are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3) or (4) of this subsection, or where the land description of the entry must be adjusted pursuant to subsection (b) of this section.

Other provisions of section 1328, at subsection (b), provide that the State and "all interested parties" are entitled to notice of the existence of claims such as Wilson's, and are to be accorded 180 days in which to contest

these homestead entry claims. In this case, of course, no such notice was given since Wilson's homestead claim was shown on Departmental records to have been extinguished in 1974, and was not, therefore, pending on agency records at the time of the tentative approval to the State. In such circumstances, we conclude that appellant's entry was not subject to legislative approval under section 1328.

On the other hand, it seems clear that a valid homestead entry would, independent of legislative ratification, constitute a "valid existing right" within the contemplation of section 906(c)(1) of ANILCA. The Thorson opinion establishes that the "rights" referred to are "those rights short of vested rights that are immune from denial or extinguishment by the exercise of secretarial discretion." State of Alaska v. Thorson, supra at 242, 91 I.D. at 334, citing Solicitor's Opinion, 88 I.D. 909, 912 (1981). Contrary to his assertion that he is now entitled to patent under provision of ANILCA, therefore, the most that can be said for Wilson's claim is that he might have a claim to a hearing to demonstrate that he has, in fact, a valid claim of homestead, despite his failure to timely answer the contest complaint in 1974.

[5] Past decisions by the Department establish the rule that issuance of patent operates "to transfer the legal title and remove from the jurisdiction of the land department the inquiry into and consideration of * * * disputed questions of fact" in such a case. See Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897); Harry J. Pike, 67 IBLA 100 (1982); Dorothy H. Marsh, 9 IBLA 113 (1973). The consequences of this rule have not always been clear, however. See State of Alaska, 45 IBLA 318 (1980), where a divided panel of this Board discusses in three separate opinions the effect of patent upon the subsequent resolution of conflicting claims pending before

the Department at the time of patent. See also Berthlyn Jane Baker, 41 IBLA 239 (1979), for an earlier discussion of the same issue. These cases indicate that even the fact of patent, though it terminates the Department's "jurisdiction" over the land, may not finally end Departmental action concerning the land. The use of the word "jurisdiction," therefore, may lead to some confusion when it is used to describe the authority of the Department to proceed in dealing with conflicting claims which are not resolved by patent, such as were presented in Thorson. What the word means in this context is that power to take direct, substantive action to affect title is withdrawn. See State of Alaska, supra at 330.

It now appears clear following the decision in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), that where title to land which a Native allotment applicant seeks has passed out of the control of the Department, which therefore lacks the authority to directly adjudicate the claim, the Department nonetheless has a continuing duty to the Native allotment claimant to evaluate the claim of a prior valid right, and to determine whether the land was erroneously conveyed so as equitably to require the Government to seek a reconveyance of the land. See Aguilar v. United States, supra; Thorson, supra at 254, 91 I.D. at 341. The sole purpose of the Aguilar proceeding is to determine whether the United States should sue to recover title to the patented land.

In Thorson, 83 IBLA at 254, 91 I.D. at 341, referring to the Native allotment applications which were there under consideration, the observation is made that "[t]he situation here is in many respects similar to that which existed in Aguilar v. United States, supra, and the procedures which were stipulated to in that case might be appropriate in this type of case as well."

In Aguilar, the court, quoting from a decision of this Board, laid out this general guidance:

> This court agrees with Administrative Law Judge Burski who dissented in a recent decision of the Interior Board of Land Appeals dealing with the same issue. He said:
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> * * * * * * *
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> If this Department has erroneously issued the patent to the State in derogation of the appellant's rights, it seems only elementary justice that the Department should bear the economic burdens attendant to a suit to cancel the patent. A hearing is essential before the Department can make an informed judgment as to the merits of the appellant's application.

474 F. Supp. at 847. Clearly, therefore, in a proper case, some continuing Departmental action may be warranted to determine whether to bring suit to compel reconveyance, despite the fact that patent has issued to the lands in dispute.

The analogy between Native allotment claimants rights, which are the subject of Thorson, and those asserted by homestead claimants such as Wilson, is not, however, perfect. As Wilson points out in his statement of reasons, section 1328 received scant attention from Congress when it considered ANILCA. Thus, Wilson comments, after discussing the similarity between the Native allotment section of ANILCA, section 905, and the provisions of the Act at section 1328 providing for approval of public land entries in Alaska, that "Section 1328 was added during the final hours of ANILCA's legislative consideration * * *" (Statement of Reasons at 3). From this circumstance, and the surface similarity between sections 905 and 1328, Wilson draws the conclusion that these two provisions must therefore accord equal rights to Natives and non-Natives in a "racially non-discriminatory manner" (Statement

of Reasons at 3). In fact, section 1328 was added by House Concurrent Resolution 453, which directed the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 39. H.R. 39, as amended, had been previously passed in the Senate and the House as ANILCA. H.R. Con. Res. 453 was submitted, considered, and agreed to in the House of Representatives on November 21, 1980. H.R. Con. Res. 453, 96th Cong., 2d Sess., 126 Cong. Rec. 11183-84. The Resolution was received in the Senate on November 21 (legislative day, November 20), 1980, held at the desk by unanimous consent, and agreed to on December 1, 1980. 126 Cong. Rec. at 15129-32. See 94 Stat. 3696 (1980). On December 1, 1980, Senator Stevens of Alaska asked that the following statement be printed in the Congressional Record as legislative history for H.R. 39:

> The provision added by this resolution [H.R. Con. Res. 453] is similar to section 905(a) of the bill. That provision approves certain native allotment applications under the Act of May 6, 1906. A number of specific requirements are included in section 905(a) to require adjudication. This concept is being applied to non-native public land entries in Alaska including but not limited to pending homesteads, trades and manufacturing sites, homesite and headquarter sites. [Emphasis supplied.]

(Cong. Rec. S 15131-32 (Dec. 1, 1980).

Wilson's conclusion concerning the significance of the legislative history of section 1328, thus, ignores two relevant factors: First, there is the fact that his entry application was not pending on agency records at the time of ANILCA's passage. BLM records at the time showed his entry to have been invalidated. Secondly, Wilson fails to consider the effect upon his claim of the lapse now of more than 6 years since the State selection was

tentatively approved by BLM. This circumstance brings into play the limitation against the United States provided by 43 U.S.C. § 1166 (1982), and bars further Departmental involvement at any level regardless of the possible merits of Wilson's appeal. See State of Alaska, supra.

Section 906 of ANILCA is explicit concerning the time when the legislative approval of State selections takes effect. Section 906(c)(1) provides that such selections are confirmed to the State and "all right, title, and interest of the United States in and to such lands is deemed to have vested in the State of Alaska as of the date of the tentative approval." (Emphasis supplied.) The legislative history of the Act reinforces the statutory language on this point. The Senate report of the bill comments, concerning section 906(c)(1):

> Subsection (c) confirms all prior selections that had been tentatively approved subject to valid existing rights and Native selection rights under the ANCSA. Title is deemed to have vested with the State as of the date of TA [tentative approval]. As future TA's are given to lands selected by the State, title shall vest on the date of such TA.

S. Rep. No. 413, 96th Cong. 2d Sess. 1980, reprinted in 1980 U.S. Code Cong. & Ad. News 5231. Beyond doubt Congress intended the date of tentative approval to be the date of conveyance to the State for all purposes. See Thorson, supra at 83 IBLA 249, 91 I.D. 338.

In this case the tentative approval of the State selection which included Wilson's claim of homestead occurred on June 3, 1976. As declared by the decision in Thorson, it is now the position of the Department that the legislative conveyance by ANILCA of tentatively approved State selections

has the operative effect of a patent. Thorson, 83 IBLA at 246, 91 I.D. at 336. As a consequence, all of the right, title, and interest of the United States in the land sought by appellant was transferred to the State of Alaska by ANILCA effective June 3, 1976. See section 906(c)(1) of ANILCA; Thorson, supra.

Since the conveyance held by Alaska is now more than 6 years old, the provisions of 43 U.S.C. § 1166 (1982) bar any further effort by the United States to inquire on its own behalf into the validity of the patent to the State or to recover back the land which Wilson claims. 43 U.S.C. § 1166 (1982); State of Alaska, supra. Section 1166 provides pertinently that "[s]uits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents." This statutory language has been construed to foreclose any attack upon a patent by the United States more than 6 years after patent issuance. See United States v. Eaton Shale Co., 433 F. Supp. 1256 (D. Colo. 1977), and cases cited. The effects of fraudulent procurement of a patent are considered in the Eaton Shale Co. opinion, 433 F. Supp. at 1270, 1271; such considerations are clearly not a factor in this case because the patent was bestowed upon the State by Congress. Moreover, since appellant does not stand in some special legal relationship to the Federal Government, the United States is clearly not authorized to proceed on his behalf, as it might be, for example, were there in this case a trust responsibility owed by the Government to a Native allottee. See, e.g., Cramer v. United States, 261 U.S. 219, 233 (1923), where, despite the fact that more than 6 years had passed since issuance of patent, the court held it had jurisdiction "to remove a cloud upon the possessory rights of its [Indian] wards." Because of this relation of trustee and ward, the court found that the action on behalf of Indian allotment claimants could

be maintained despite the 6-year statute of limitations "because the relation of the Government to them is such as to justify or require its affirmative intervention." Id. at 234. No similar relationship exists here. See also State of Alaska, supra at 326, 329, 334.

As other decisions point out, this circumstance does not prevent Wilson from bringing his own action for relief before an appropriate tribunal; the statute limits actions by the United States only. See, e.g., Capron v. Van Horn, 258 P. 77 (Cal. 1927). Wilson may, if he considers such a course feasible, pursue a remedy in the courts. This pending appeal must, however, be rejected. Alaska v. Thorson, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge